

FORM 1040 (12/15)

ADVERSARY PROCEEDING COVER SHEET
(Instructions on Reverse)

ADVERSARY PROCEEDING NUMBER
(Court Use Only)
PLAINTIFFS

KIMBERLY J. HUSTED, Chapter 7 Trustee of the
Estate of ECS Refining, Inc.

DEFENDANTS

WAL-MART STORES EAST, L.P.

ATTORNEYS (Firm Name, Address, and Telephone No.)

Christopher D. Sullivan; Diamond McCarthy LLP, 150
California Street, Suite 2200, San Francisco, CA 94111
415-692-5200

ATTORNEYS (If Known)**PARTY** (Check One Box Only)

Debtor U.S. Trustee/Bankruptcy Admin
 Creditor Trustee Other

PARTY (Check One Box Only)

Debtor U.S. Trustee/Bankruptcy Admin
 Creditor Trustee Other

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Complaint to avoid and recover transfers pursuant to 11 U.S.C. §§ 502, 547, 548, 549, and 550.

NATURE OF SUIT

(Number up to five (5) boxes starting with the lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property

11 - Recovery of money/property - § 542 turnover of property
 12 - Recovery of money/property - § 547 preference
 13 - Recovery of money/property - § 548 fraudulent transfer
 14 - Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien

21 - Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property

31 - Approval of sale of property of estate and of a co-owner - § 363(h)

FRBP 7001(4) – Objection/Revocation of Discharge

41 - Objection/revocation of discharge - § 727(c), (d), (e)

FRBP 7001(5) – Revocation of Confirmation

51 - Revocation of confirmation

FRBP 7001(6) – Dischargeability

66 - Dischargeability - § 523(a)(1), (14), (14A) priority tax claims
 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud
 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny
(continued next column)

FRBP 7001(6) – Dischargeability (continued)

61 - Dischargeability - § 523(a)(5), domestic support
 68 - Dischargeability - § 523(a)(6), willful and malicious injury
 63 - Dischargeability - § 523(a)(8), student loan
 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support)
 65 - Dischargeability - other

FRBP 7001(7) – Injunctive Relief

71 - Injunctive relief - imposition of stay
 72 - Injunctive relief - other

FRBP 7001(8) – Subordination of Claim or Interest

81 - Subordination of claim or interest

FRBP 7001(9) – Declaratory Judgment

91 - Declaratory judgment

FRBP 7001(10) – Determination of Removed Action

01 - Determination of removed claim or cause

Other

SS-SIPA Case - 15 U.S.C. §§ 78aaa *et. seq.*
 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Check if this case involves a substantive issue of state law

Check if this is asserted to be a class action under FRCP 23

Check if a jury trial is demanded in complaint

Demand \$ 150,000

Other Relief Sought

FORM 1040 (12/15), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR ECS Refining, Inc.		BANKRUPTCY CASE NO. 18-22453
DISTRICT IN WHICH CASE IS PENDING Eastern District of California	DIVISION OFFICE Sacramento	NAME OF JUDGE Hon. Frederick E. Clement
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE April 23, 2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Christopher D. Sullivan	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.